

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

BENEFICIARIES OF THE ESTATE OF)	No. 55586-3-I
LEONA FULLER, by and through)	
NORMA RICHLAND, Personal)	DIVISION ONE
Representative for the Estate,)	
)	
Respondent,)	
)	
v.)	
)	
DONNA TAYLOR and LESTER)	
TAYLOR, wife and husband, and their)	
marital community,)	UNPUBLISHED
)	
Appellants.)	FILED: <u>June 19, 2006</u>
)	
)	

COX, J. -- Donna and Lester Taylor appeal the judgment that assesses damages, awards prejudgment interest on certain sums, denies reimbursement for amounts claimed to benefit the trust, and imposes sanctions. We hold that the calculations of the damages and prejudgment interest amounts are supported by substantial evidence in the record. We also conclude that the trial court properly exercised its discretion in denying the requests for reimbursement. And although the sanctions that are properly before us for

review were arguably proper, the trial court failed to set forth in the sanction order the express reasons for the sanctions. As for the cross-appeal by Norma Richland, we hold that the trial court did not abuse its discretion in denying fees to the estate of Leona Fuller ("Estate"). Accordingly, we affirm in part, vacate in part, and remand for further proceedings.

Norma Richland, personal representative of the Estate, sued Donna and Lester Taylor and the estate of Donald Fuller in order to recover Leona Fuller's ("Fuller") assets held in trust by Donna Taylor. The trial court concluded that the Estate was entitled to all of the money held in trust by Taylor as of December 25, 2001. The court also concluded that Taylor was not entitled to management fees or attorney fees from Fuller's accounts. The trial court awarded prejudgment interest at the statutory rate of 12 percent. The trial court denied attorney fees to both parties.

Taylor appeals. The Estate cross-appeals the denial of attorney fees.

CALCULATION OF DAMAGES

Taylor challenges the calculation, not the assessment, of damages reflected in the judgment. We hold that sufficient evidence supports the trial court's calculation of damages.

"Prejudgment interest is permitted if the amount claimed is liquidated or otherwise capable of calculation with 'exactness, without reliance on opinion or discretion.'"¹ The interest rate applicable to prejudgment interest is generally set

¹ Safeco Ins. Co. v. Woodley, 150 Wn.2d 765, 773, 82 P.3d 660 (2004) (quoting Prier v. Refrigeration Eng'g Co., 74 Wn.2d 25, 32, 442 P.2d 621

at 12 percent by statute.² Prejudgment interest accrues from the date the claim arose to the date of judgment.³ We review a trial court's award of prejudgment interest for an abuse of discretion.⁴

From our review of the record, there does not appear to be any dispute over the amounts of the several principal sums on which prejudgment interest was calculated. For example, it is undisputed that on December 25, 2001, the balance of Fuller's Timberland accounts was \$292,865.85. By August 15, 2002, the balance was \$288,287.00, a decline of \$4,578.85.

In response to an order of the trial court, Taylor paid \$258,287.00 of the December 2001 balance directly to Richland on September 13, 2002. The remaining \$30,000.00 of the \$288,287.00 sum then available was deposited in the registry of the court. This deposit was made because there was a dispute whether Taylor was entitled to management fees, attorney fees, and taxes.

Following trial and a memorandum opinion reflecting the decision, the court on December 17, 2004, entered judgment against Taylor. The court concluded that the Estate was entitled to \$292,865.85, the amount in the Timberland accounts on December 25, 2001. The court ordered Taylor to pay the decrease in value of the Timberland accounts from December 25, 2001, to

(1968)).

² Mehlenbacher v. DeMont, 103 Wn. App. 240, 251, 11 P.3d 871 (2000).

³ Seattle-First Nat'l Bank v. Washington Ins. Guar. Ass'n, 94 Wn. App. 744, 760, 972 P.2d 1282 (1999).

⁴ Id. at 757.

August 15, 2002, which totaled \$4,578.85, plus 12 percent prejudgment interest on the liquidated amount. The court further ordered Taylor to repay \$6,596.55, the total of the monies she used to pay herself management fees, her attorney fees, and to pay taxes. The court also ordered the \$30,000 held in the registry of the court to be disbursed to the Estate because the court concluded Taylor had no claim to those funds. Finally, the trial court awarded prejudgment and post judgment interest at a rate of 12 percent on the proper amounts.

The trial court correctly calculated damages, and excluded the \$30,000 from prejudgment interest. In short, the record supports the amount of the damages the trial court assessed. Taylor fails to provide any persuasive evidence to refute the trial court's calculations.

COSTS AND EXPENSES

Taylor next argues that the trial court abused its discretion in failing to reimburse her for costs and expenses she allegedly incurred in her capacity as trustee. We disagree.

Where a trust is silent as to a trustee's compensation, the trustee should apply to the court for compensation, with notice to the beneficiaries, and should not fix the compensation themselves.⁵ The trial court has discretion in allowing compensation for services rendered by a trustee.⁶

Here, Fuller's assets were placed in two Timberland accounts and held in

⁵ Monroe v. Winn, 16 Wn.2d 497, 509, 133 P.2d 952 (1943); George G. Bogert, Trusts & Trustees, § 977 (2d ed. 1983).

⁶ Ryan v. Plath, 20 Wn.2d 663, 673, 148 P.2d 946 (1944).

trust by Taylor for Fuller's benefit. Without prior court approval, Taylor deducted a one percent fee for managing the Timberland accounts. Taylor also paid her attorney, Preston Johnson, fees out of the Timberland accounts. Johnson however, never represented Fuller.

The trial court did not abuse its discretion in refusing to authorize these expenditures after they had been made without prior approval of the court. There is no showing that the expenditures benefited the Estate.

SANCTIONS

Taylor argues that the trial court abused its discretion in imposing sanctions of \$500 and \$2,500 respectively. Specifically, Taylor challenges the sanctions imposed against her attorney, Preston Johnson, in the amount of \$500 and the sanctions against her for \$2,500. We hold that although the sanctions that are properly before us are arguably proper, the trial court failed to specify in its order the reasons for such sanctions.

CR 11 requires attorneys to date and sign every pleading, motion, and legal memorandum filed with the court, certifying the pleading motion, or memoranda "is well grounded in fact, . . . is warranted by existing law or a good faith argument, . . . [and] is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."⁷ If a party violates CR 11, the court may impose appropriate sanctions ordering that party to pay reasonable expenses incurred by the other

⁷ Biggs v. Vail, 124 Wn.2d 193, 196, 876 P.2d 448 (1994).

party, including reasonable attorney fees.⁸ We review CR 11 sanctions for an abuse of discretion.⁹

When a court imposes CR 11 sanctions, the court must specify the sanctionable conduct in its order.¹⁰ “The court must make a finding that either the claim is *not* grounded in fact or law and the attorney or party failed to make a reasonable inquiry into the law or facts, *or* the paper was filed for an improper purpose.”¹¹

An attorney who is sanctioned by the court becomes an aggrieved party and may appeal sanctions on his or her own behalf.¹² An attorney may not appeal decisions that solely affect his or her clients, and clients may not appeal decisions only affecting their attorney.¹³

Taylor is appealing the \$500 sanctions imposed solely against her attorney, Preston Johnson. But because Taylor is not the aggrieved party and Johnson was not named in the appeal, Taylor cannot appeal the \$500 sanctions. Thus, we will not disturb the imposition of those sanctions solely against

⁸ CR 11(a).

⁹ Biggs, 124 Wn.2d at 197.

¹⁰ Id. at 201.

¹¹ Id.

¹² Breda v. B.P.O. Elks Lake City 1800 SO-620, 120 Wn. App. 351, 353, 90 P.3d 1079 (2004).

¹³ Id.

Johnson.

The \$2,500 in sanctions imposed against Taylor are properly before us.

The Estate moved for attorney fees, costs, and sanctions under CR 11 and LR 4(g) because Taylor filed a motion to dismiss after the deadline and failed to comply with CR 56. The trial court granted the Estate's motion and awarded it \$2,500 in attorney fees. Although sanctions may have been proper, the trial court did not enter findings specifying the sanctionable conduct or explain the sanctions in its order, as required under CR 11.¹⁴ Accordingly, we must remand for the trial court to enter proper findings.

ATTORNEY FEES

In its cross-appeal, the Estate argues that the trial court abused its discretion in denying it attorney fees and costs under RCW 11.96A.150 or RCW 11.76.070. We disagree.

RCW 11.96A.150(1) is the proper statute at issue here. It authorizes an award of attorney fees and costs to a party from any party, from assets of the estate, or from nonprobate assets that are the subject of the proceedings. "The court may order the costs to be paid in such amount and in such manner as the court determines to be equitable."¹⁵ We review a denial of attorney fees for an abuse of discretion.¹⁶

¹⁴ Biggs, 124 Wn.2d at 201-02 (The supreme court remanded the case to the trial court when its order failed to provide findings specifying the sanctionable conduct under CR 11.).

¹⁵ RCW 11.96A.150(1).

The Estate argues that the trial court abused its discretion in failing to award it attorney fees because Taylor breached her fiduciary duties as a trustee. Because RCW 11.96A.150 does not require a finding of a breach of fiduciary duty, but allows the trial court to award attorney fees when it determines fees to be equitable, we need not address this argument further.

Here, the trial court stated that “Taylor, throughout her dealings with [Fuller’s] monies, was making a sincere effort to be fair and upright.” Despite the Estate’s citation to several cases, none ***requires*** the trial court under these circumstances to award fees. We also note that the trial court ordered Taylor to reimburse the Estate for the unauthorized withdrawals, which she did. We cannot say that the court abused its discretion by declining to award fees to the Estate under the circumstances.

Finally, the Estate requests fees on appeal. We conclude, in the exercise of our discretion, that an award of fees against Taylor to the Estate under RCW 11.96A.150 is warranted. The Estate has benefited by defending on appeal the trial court’s decision. There is no truly persuasive issue raised on appeal, and the Estate should not be further depleted by the expense of attorney fees on appeal.

We affirm the judgment. We award the Estate its attorney fees on appeal, the amount of which shall be determined by the trial court on remand.¹⁷ We also

¹⁶ See Entm’t Indus. Coalition v. Tacoma-Pierce County Health Dep’t, 153 Wn.2d 657, 666, 105 P.3d 985 (2005).

¹⁷ RAP 18.1(i).

remand for the trial court to specify the sanctionable conduct under CR 11.

Cox, J.

WE CONCUR:

Dwyer, J.

Becker, J.